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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/661,848	09/12/2003	Andrew W. Mochlenbrock	031456/259348	8549
826	7590	01/24/2006	EXAMINER	
ALSTON & BIRD LLP BANK OF AMERICA PLAZA 101 SOUTH TRYON STREET, SUITE 4000 CHARLOTTE, NC 28280-4000			AUGHENBAUGH, WALTER	
		ART UNIT		PAPER NUMBER
		1772		

DATE MAILED: 01/24/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/661,848	MOEHLENBROCK ET AL.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Walter B. Aughenbaugh	1772	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) Responsive to communication(s) filed on 14 November 2005.
- 2a) This action is FINAL.                  2b) This action is non-final.
- 3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) Claim(s) \_\_\_\_\_ is/are allowed.
- 6) Claim(s) 1-17 is/are rejected.
- 7) Claim(s) \_\_\_\_\_ is/are objected to.
- 8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) The specification is objected to by the Examiner.
- 10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) All    b) Some \* c) None of:
1. Certified copies of the priority documents have been received.
  2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                    | Paper No(s)/Mail Date. _____.   |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____. | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
|   | 6) <input type="checkbox"/> Other: _____.                                   |

## **DETAILED ACTION**

### ***Acknowledgement of Applicant's Amendments***

1. The amendments made in claims 1, 10, 11 and 14 in the Amendment filed November 14, 2005 (Amdt. A) have been received and considered by Examiner.

### ***WITHDRAWN REJECTIONS***

2. The 35 U.S.C. 112 rejection of claim 11 made of record in paragraph 3 of the previous Office Action mailed September 22, 2005 has been withdrawn due to Applicant's amendment in claim 11 in Amdt. A.

### ***REPEATED REJECTIONS***

#### ***Claim Rejections - 35 USC § 103***

3. The 35 U.S.C. 103 rejection of claims 1-9 and 14-17 made of record in paragraph 5 of the previous Office Action mailed September 22, 2005 has been repeated for the reasons previously made of record and for the following reasons that address the amendments in claims 1 and 14 in Amdt. A: Forte teaches that the multilayer film is oxygen-permeable (col. 1, lines 9-27 and col. 3, lines 24-25). The first outer layer and the second outer layer of Forte are oxygen-permeable because these layers are layers of the oxygen-permeable multilayer film of Forte (col. 1, lines 9-27 and col. 3, lines 24-47). The microporous film of Antoon, Jr. is oxygen-permeable because Antoon, Jr. teach that the microporous film is substantially oxygen impermeable (col. 2, lines 22-37: a substantially oxygen impermeable film has some degree of permeability to oxygen and is therefore oxygen-permeable).
4. The 35 U.S.C. 103 rejection of claims 10-13 made of record in paragraph 6 of the previous Office Action mailed September 22, 2005 has been repeated for the reasons previously

made of record and for the following reasons that address the amendments in claim 10 in Amdt.

A: Forte teaches that the multilayer film is oxygen-permeable (col. 1, lines 9-27 and col. 3, lines 24-25). The first outer layer, the second outer layer and the center layer of Forte are oxygen-permeable because these layers are layers of the oxygen-permeable multilayer film of Forte (col. 1, lines 9-27 and col. 3, lines 24-47). The microporous film of Antoon, Jr. is oxygen-permeable because Antoon, Jr. teach that the microporous film is substantially oxygen impermeable (col. 2, lines 22-37: a substantially oxygen impermeable film has some degree of permeability to oxygen and is therefore oxygen-permeable).

*Response to Arguments*

5. In the fifth through ninth lines of page 7 of Amdt. A, Applicant states that claim 10 recites that the intermediate layer is formed from an unfilled oxygen-impermeable polymer composition, but claim 10 does not recite that the intermediate layer is formed from an unfilled oxygen-impermeable polymer composition.

6. Applicant's arguments presented on pages 7-9 of Amdt. A regarding the 35 U.S.C. 103 rejections of claims 1-17 have been fully considered but are not persuasive.

Applicant's statements on page 8 of Amdt. A regarding the hydrophilic polymeric resins of Forte are unsupported. Furthermore, Forte does not limit the hydrophilic polymeric resins to the materials addressed by Applicant on page 8 of Amdt. A. Forte does teach that the outer layers are oxygen permeable because Forte teaches that the multilayer film is oxygen-permeable (col. 1, lines 9-27 and col. 3, lines 24-25), and the outer layers are layers of the oxygen-permeable multilayer film of Forte. Applicant's statement that "polymers listed by Forte for his outer layers... have extremely low oxygen permeability, and indeed are frequently employed as

“effective oxygen barriers” is unsupported. Furthermore, a polymer that has “extremely low oxygen permeability” is permeable to oxygen to some extent since it has an oxygen permeability (that is not 0). The microporous films of Antoon, Jr. are not described as being “gas impermeable”: they are described as being “substantially oxygen/carbon dioxide impermeable” (col. 2, lines 31-37). A substantially oxygen impermeable film has some degree of permeability to oxygen and is therefore oxygen-permeable.

*Conclusion*

7. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

8. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Walter B. Aughenbaugh whose telephone number is 571-272-1488. While the examiner sets his work schedule under the Increased Flexitime Policy, he can normally be reached on Monday-Friday from 8:45am to 5:15pm.

Art Unit: 1772

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Harold Pyon, can be reached on 571-272-1498. The fax phone number for the organization where this application or proceeding is assigned is to 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Walter B. Aughenbaugh

01/18/06

WBA

  
HAROLD PYON  
SUPERVISORY PATENT EXAMINER  
*1772*

*1/20/06*